

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Subscriber Carrier) CC Docket No. 94-129
Selection Changes Provisions of the)
Telecommunications Act of 1996)

AMERITECH COMMENTS ON JOINT PETITION FOR WAIVER

The Ameritech Operating Companies (Ameritech) respectfully submit the following comments on the Joint Petition for Waiver filed in the above-captioned proceeding by MCI WorldCom, AT&T Corp., the Competitive Telecommunications Association, Sprint Corporation, the Telecommunications Resellers Association, Excel Telecommunications, Frontier Corporation, and Qwest Communications Corporation (Joint Petitioners). By this petition, Joint Petitioners seek a waiver of certain of the slamming rules adopted in the *Second Report and Order*¹ so that they may implement a third party liability administrator system to handle slamming complaints and related matters. Such a system, they claim, would offer substantial benefits, while "curing" a number of defects in the liability rules adopted in the *Second Report and Order*.

Ameritech did not learn of the third party liability administrator proposal until recently, and it did not have the opportunity to participate in its formulation. Based on the limited information available to date, it appears that this proposal could offer certain

¹ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers by Long Distance Carriers, *Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 94-129, FCC 98-334, released December 23, 1998.

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benefits. Most notably, the proposal offers a mechanism by which slamming complaints could be investigated by an ostensibly neutral third party administrator (TPA), as opposed to the authorized carrier. It could also facilitate the exchange of information and liability payments among carriers involved in slamming disputes, an exchange that may be cumbersome, if not impracticable, without some TPA mechanism. The proposal may also offer other benefits, though some of the benefits cited by Joint Petitioners appear overstated.²

The fact that a TPA mechanism would seem to offer certain benefits, however, is not enough. Before the Commission sanctions this proposal, it must have some idea of its cost and operational implications. On this front, the proposal is completely silent. Critical cost and operational data has either not been shared or has not been developed.³

² For example, the Joint Petitioners' claim that their TPA proposal would greatly simplify matters for consumers is not overly convincing. Today, when a consumer contacts a local exchange carrier (LEC) billing agent to complain of a slam, that consumer is immediately switched back to her preferred carrier. If the customer has not paid charges assessed by the slammer, the charges are removed from her bill. If she has already paid those charges, she receives a credit for the amounts paid. Thus, the consumer obtains a switch-back and redress of her complaint in one phone call. It would be hard to imagine a more consumer-friendly process. To be sure, if a consumer does not contact her LEC, she could receive a "run-around." That problem, however, does not require a TPA; it could be avoided if the carrier contacted by the customer simply directed the customer to the LEC to obtain a switch-back. Certainly, it is no more difficult to direct a customer to a LEC for a switch-back than it is to direct a customer to a TPA for a switch-back. Ameritech makes these points, not to criticize the TPA proposal, but simply to suggest that, from the consumers' standpoint, this proposal may not be as beneficial as the Joint Petitioners suggest.

³ The only reference to cost in the petition is the plan to charge slammers up to \$50 on a per-complaint basis. This charge is supposed to reflect the cost of processing a complaint. Petitioners give no clue as to the overall costs of the TPA proposal, how much of these costs would be recouped by the per-complaint charge, how much of an annual assessment would be assessed on participants, how this assessment would be levied, and whether the processing charge would be assessed in those cases in which the TPA concludes no slam has taken place, and if so, on whom. Nor do they address the

This is of concern to Ameritech because, in the words of Joint Petitioners, the proposal “is ambitious, represents a sea change in carrier practices, and requires the formation of an enterprise that today does not exist.”⁴ Surely the Commission cannot sanction a proposal of this magnitude without some idea of its costs.

Ameritech, of course, understands that concerns about cost are at least somewhat offset by the ostensibly voluntary nature of this proposal. This proposal, though, is not truly voluntary. While non-participants would be spared the annual assessment, they would be “bound to the TPA process on a per complaint basis.”⁵ In fact, the TPA procedures would apply whenever any party involved in the dispute is a participating carrier, and per-complaint fees would be assessed both on participants and non-participants. Moreover, irrespective of whether they choose to participate in the TPA process, LECs would be required to establish links and mechanisms that would permit them to: (i) “hot transfer” customer complaints to the TPA; (ii) receive switch-back instructions from the TPA; (iii) send acknowledgment to the TPA that a switch-back has

costs of the various links to the TPA and who pays for those costs. These are not trivial omissions.

⁴ Joint Petition at 4. *See also* Joint Motion for Extension of Effective Date of Rules or, in the Alternative, For a Stay, filed by Joint Petitioners concurrently with their Joint Petition for Waiver, Declaration of Sally Ann McMahon at ¶ 6 (referring to the “considerable resources” needed to implement a TPA system); and ¶ 11 (referring to the “monumental task of developing and implementing a call center operation which can handle tens of thousands of unauthorized customer conversion complaints a year.”) Ameritech notes that, even by the Joint Petitioners own account, which Ameritech views as extremely conservative, this center would have to handle, not tens of thousands, but hundreds of thousands of complaints annually. *See id* at 5.

⁵ Joint Petition at 27.

been completed; (iv) receive and implement “stop collections” messages from the TPA;⁶ (v) receive and process information about the resolution of slamming complaints so that the original carrier change charges can be credited to the user and rebilled to the slamming carrier, when appropriate; (vi) defend themselves against what could be routine, *pro forma* claims that unauthorized changes were the fault of the executing carrier.⁷ Given these obligations – which must be undertaken irrespective of whether the LEC chooses to participate in this mechanism – the suggestion that these procedures are truly voluntary is less than credible.

⁶ Ameritech does not have the capability in its billing systems to implement a “stop collection order” without removing an item from a customer’s bill. If the item remains on the bill, Ameritech’s systems automatically assess late charges and collection is pursued. Moreover, Ameritech estimates that changing its billing systems to establish a “stop collection” status would require major work (on the order of 15,000 man-hours), twelve to fifteen months, and approximately \$1 million. That would be an unnecessary expense that would not serve the interests of consumers in any event. Disputed payments should be removed from a customer’s bill pending investigation of the customer’s allegations. If those allegations are ultimately found lacking, the customer can be rebilled.

⁷ Under the proposal, any carrier determined to be “unauthorized” may elect to request nonbinding dispute resolution against the executing carrier, irrespective of whether the executing carriers elects to “participate” in the TPA mechanism. Executing carriers are given 30 days to provide information that the customer change at issue was executed properly.

This aspect of the proposal is of grave concern to Ameritech. There is no evidence that executing carriers are responsible for the slamming scourge that is plaguing the telecommunications industry. Yet under this proposal, carriers that are potentially on the hook for an unauthorized carrier change can routinely claim that the executing carrier was at fault. The proposal includes no limit on such claims, no requirement that such allegations be supported with hard evidence, and no penalty for false claims. Executing carriers might thus find themselves in a position of having to demonstrate that they were not at fault virtually every time a slam takes place. Ameritech has no idea what level of proof would suffice to rebut such allegations, since executing carriers have no verification record upon which to rely. As shown below, though, since the TPA would be controlled by the interexchange carrier industry, one might suspect that the process would be less than fair to executing carriers.

There are other reasons, as well, for the Commission to take a hard look at the costs and benefits of this proposal before granting the requested waiver. Among the touted virtues of this mechanism is the notion that it will bring simplicity and consistency to the slamming complaint process. This benefit will be lost unless there is the broadest possible participation in the TPA mechanism. Clearly, the Commission is in no position to guess at the level of participation without some idea of the costs of this proposal. If the costs are excessive, even carriers that now support the proposal, and certainly members of the trade associations behind it, may conclude that it is more cost-effective not to participate. Moreover, once this proposal is implemented, the prospects for an alternative TPA mechanism are remote, at best. For this reason, the Commission needs to get it right the first time.

Ameritech does not mean to imply by these comments that the proposal lacks merit or that its costs exceed its benefits. It simply does not yet have the information to make that assessment – and neither does the Commission. Ameritech hopes and expects to work with the IXC's that designed this proposal to obtain further cost and technical information, and it may file additional materials in this docket based on that information (or lack thereof). In the meantime, if the Commission decides to sanction the concept of a TPA, it should do no more; it should make it clear that it is not necessarily approving the specifics of the proposal presented by Joint Petitioners, but will leave those matters to a neutral industry body.

This, of course, assumes that the governing Board is, in fact, a neutral industry body. Unfortunately, as the proposal is now structured, that is not the case. Although the Joint Petitioners claim that the TPA should be a neutral third party, they have rigged the

governing Board to ensure IXC control of all matters. Under their proposal, the Board would consist of a representative of each of four trade associations plus seventeen carrier representatives. Of the four trade associations, two - CompTel and the Telecommunications Resellers Association - represent IXCs. A third - ALTS - represents competitive LECs, many of which are also IXCs. Only USTA is a true LEC representative. Worse yet, of the seventeen carrier seats, LECs are permitted a maximum of eight seats. Since the proposal provides that all Board decisions shall be decided based on a simple majority vote, this makeup ensures IXCs control of every vote.

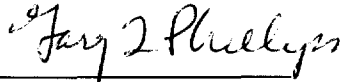
The proposed make-up of the governing Board is particularly troubling given the vast amount of discretion that the Joint Petitioners would leave to the Board. Among other things, the Board would: (i) devise and issue the request for proposal by which the TPA would be chosen, including develop performance standards; (ii) select and contract with the vendor that would serve as the TPA, establish performance criteria, evaluate its performance and, if necessary, replace the vendor; (iii) develop bylaws and operating procedures for the TPA, and, in general, control the operations of the TPA; (iv) determine the threshold of false verification cases that would result in penalties to a carrier; (v) serve as Advisory Committee rendering advice and comment on various regulatory matters; (vi) address requests by regulators *and carriers* for reports compiled from information collected by the TPA;⁸ and (vii) determine the basis upon which the entire

⁸ While petitioners propose that carriers may seek specific reports based on information that the TPA routinely collects, they do not address whether this aspect, or any other aspect, of the proposal is consistent with section 222 of the 1996 Act. Among other things, section 222 prohibits a telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service from using such information for any other purpose, including marketing purposes. It is not clear to Ameritech whether a TPA controlled by a Board comprised of telecommunications carriers would be subject to this provision.

mechanism would be financed, including determining annual revenue assessments for each participant, as well as charges for individual investigations.

The biased composition of the industry Board cannot be squared with the claims of Joint Petitioners that “independence and neutrality [of the TPA] are prerequisites if the administrator function is to resolve consumer complaints in a fair and equitable manner,” and that “even the appearance of a conflict would detract from the functioning of the administrator.”⁹ If the Commission eventually decides to grant the requested waiver and sanction the proposed TPA mechanism, it must, at a minimum, order changes in the governing Board, both as to the trade association and carrier seats, to ensure that it is truly neutral.

Respectfully Submitted,



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⁹ Joint Petition at 15.

CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of Ameritech Comments on Joint Petition for Waiver has been served on the parties attached via first class mail – postage prepaid on this 16th day of April 1999.

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